



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Joseph et al.

Examiner: J. Chawla

Serial No.: 10/805,779

Art Unit: 1794

Filed: March 22, 2004

For: A Non-Dairy Whippable Food Product

37 C.F.R. 1.132 Declaration

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I, Andrew Fendinger, declare:

1. That I am a Senior Scientist at Rich Products Corporation in Buffalo, NY.
2. That I have been working at Rich Products for the past 7 years.
3. That I am one of the named inventors of, and am familiar with, the subject matter of United States Patent Application No. 10/805,779, filed March 22, 2004.
4. That I am familiar with the Office Action dated December 12, 2007, in which claims 1-15 were rejected as obvious over the product disclosed in column 20, lines 25-45 of U.S. Patent No. 6,302,841 to Lynch et al. (the "Cited '841 Product").
5. That the following experiments were performed to compare the properties of the Cited '841 Product and the product of the present invention.

5.1 Preparation of the Products

The Cited '841 Product was prepared according to the process described in lines 17-21 of the '841 patent as follows. The ingredients (from lines 25-45, col. 20) were mixed, the batch was heated to 115 to 120° F, homogenized using a cycle of 3,000/500 PSI pressure, and cooled to

40-44° F.

The product of the present invention described in Table 2 (page 15) was prepared according to the process described on page 10, lines 12-22 of the present specification as follows. The ingredients were mixed, the batch was heated to 190° F, homogenized using a cycle of 1,500/500 PSI pressure, and cooled to 40-50° F.

5.2 Comparison of the Products Without Added Sugar

Following preparation as described above the Cited '841 Product and the present invention product were whipped as follows. 650 grams of each of the formulation were whipped on a 4 quart Hobart mixer at medium speed at 47° F.

5.2.1 Whipping Time: The present invention required 2 min 30 sec to whip to the desired texture and had a density of 0.53 g/ml, while the Cited '841 Product required 10 min 45 sec to whip to the same texture and had a density of 0.31 g/ml.

5.2.2 Performance in Water: 4 grams of whipped products of the Cited '841 Product and the present invention product were placed in a glass of water at room temperature and the appearance was noted after 30 minutes. The results are shown in Figure 1 for the Cited '841 Product (on the right) and the present invention product (on the left). As shown in Figure 1, the whipped products in both formulations dis-associated and mixed with the water indicating these whipped products behaved as oil in water emulsions.

5.3 Comparison of the Products With Added Sugar

217 grams of 10X sugar was added to 433 grams of the unwhipped formulation and then both the products were whipped on a 4 quart Hobart mixer at medium speed at 47° F.

5.3.1 Whipping Time: The present invention required 4 min 30 sec to whip to the desired texture and had a density of 0.77 g/ml, while the Cited '841 Product required 14 min to whip to the same texture and had a density of 0.52 g/ml.

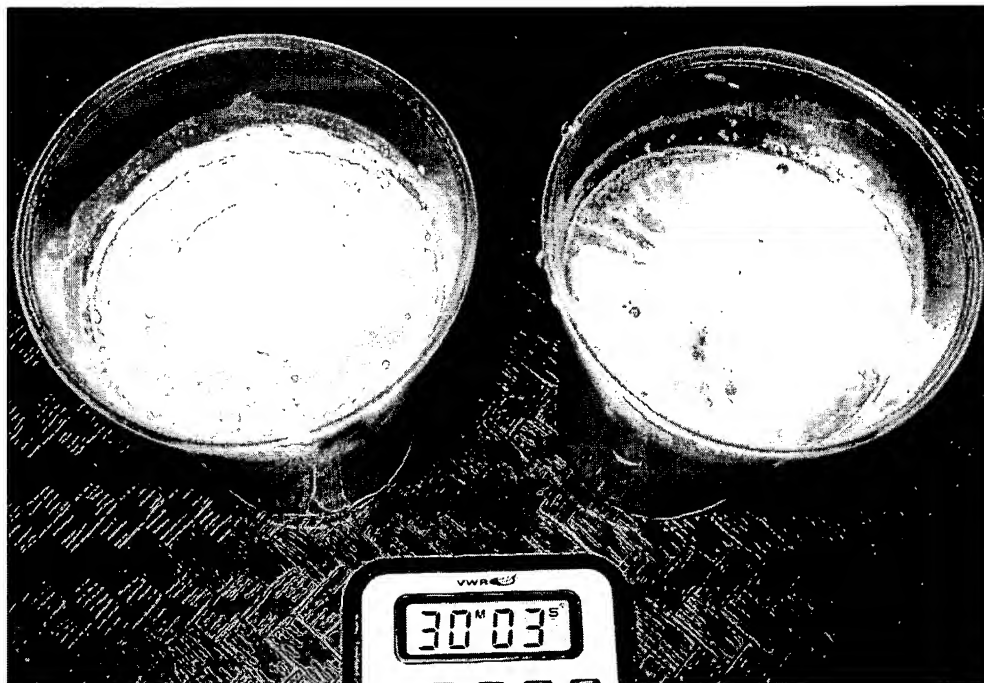
5.3.2 Performance in Water: 6 grams of whipped products of the Cited '841 Product and the present invention product were placed in water and the appearance was noted after 6 min and after 1 hour. The results are shown in Figures 2A and 2B for the Cited

'841 Product (on the right) and the present invention product (on the left) after 6 min (Figure 2A) and after 1 hour (Figure 2B). While the whipped product of the present invention appears intact at both time points, the Cited '841 Product can be seen to be dis-associating at 6 min and can be seen to have significantly dis-associated at 1 hour. These data indicate that with added sugar, the Cited '841 Product still behaves as an oil-in-water emulsion while the present product has undergone inversion i.e., behaves as a water-in-oil emulsion.

5.4 Comparison of the Products Under Same Processing Conditions

For the above data, the Cited Product was prepared according to the process described in the '841 Patent while the present invention product was prepared according to the process described in the present specification. In another experiment, the Cited '841 Product was processed according to the process of the present invention - i.e., ingredients were mixed, the batch was heated to 190° F, homogenized using a cycle of 1,500/500 PSI pressure, and cooled to 40-50° F. 217 grams of 10X sugar was added to 433 grams of the unwhipped formulation and then the product was whipped on a 4 quart Hobart mixer at medium speed at 47° F. This product required 14 min 45 sec to reach the same texture as the present product. Further, when 4 grams of the whipped product was placed in water, the water became significantly cloudy as early as 3 minutes due to mixing of the product into water indicating this product behaved as an oil-in-water emulsion.

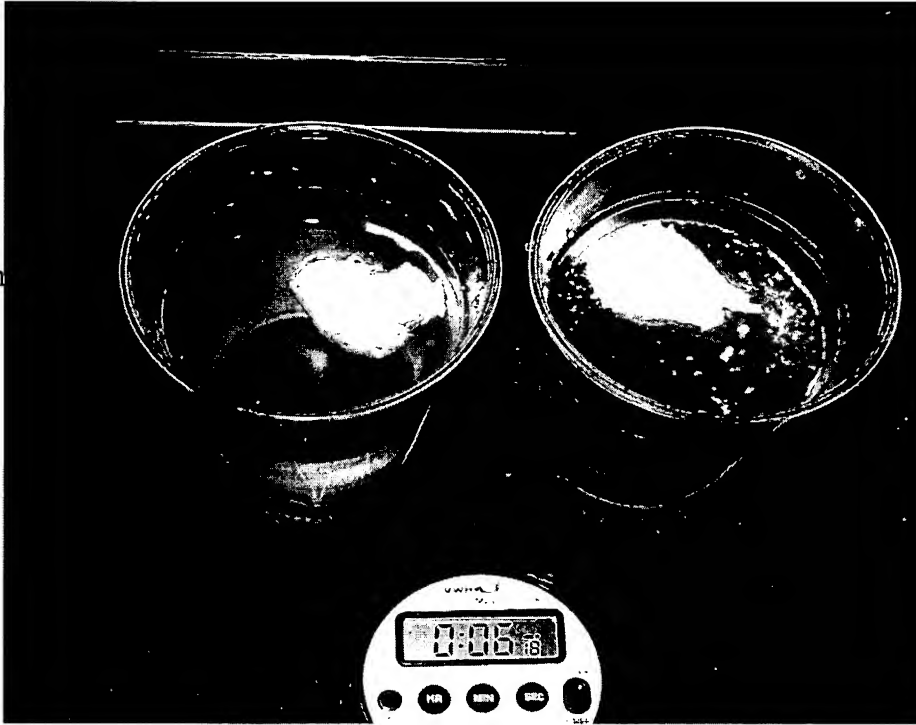
Present
Invention



Cited Product
of Patent 6,203,841

Figure 1 (Whipped products without added sugar- after 30 minutes)

Present
Invention



Cited Product
of Patent
6,203,841

Figure 2A (Whipped products with added sugar - after 6 minutes)

Present
Invention



Cited Product
of Patent
6,203,841

Figure 2B (Whipped products with added sugar - after 1 hour)

6. That all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 101 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued therefrom.

Respectfully submitted,

5/28/08
Date

Andrew Fendinger
Andrew Fendinger